

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff, No: 1:16cr242

vs.

LAWRENCE GERARD NASSAR,

Defendant.

Before:

THE HONORABLE JANET T. NEFF
U.S. District Judge
Grand Rapids, Michigan
December 7, 2017
Sentencing Proceedings

APPEARANCES:

MR. ANDREW BIRGE, U.S. ATTORNEY

By: MR. SEAN LEWIS

330 Ionia NW

PO Box 208

Grand Rapids, MI 49501

616-456-2404

On behalf of the Plaintiff;

MR. MATTHEW NEWBURG

Newburg Law PLLC

316 Taylor St.

Grand Ledge, MI 48837

517-505-2323

MS. SHANNON MARIE SMITH

Law Offices of Shannon M. Smith, P.C.

1668 S. Telegraph Rd., Suite 140

Bloomfield Hills, MI 48302

248-636-2595

On behalf of the Defendant.

REPORTED BY: MS. KATHY J. ANDERSON, RPR, FCRR

December 7, 2017

PROCEEDINGS, 10:58 a.m.

THE CLERK: All rise, please. This court is now in session. Please be seated.

THE COURT: Good morning, everybody.

MR. NEWBURG: Good morning.

THE COURT: This is the date and time set for sentencing in case number 1:16cr242, the United States of America versus Lawrence Gerard Nassar.

And before we get started with the formal sentencing hearing, ladies and gentlemen, a couple of things I want to mention. First of all, as everybody knows, this case is one that has some good amount of emotion involved with it. We have a lot of people here in the courtroom, and I caution you to please remain calm throughout the proceedings.

Secondly, if anybody has a cell phone, a pager, a laptop, or any other electronic device, they must be turned off completely now so as not to, a couple of reasons really, so as not to disturb the proceedings, first of all, and secondly, because they are not permitted to make any connection with the outside world while we're in session.

Counsel, may I please have appearances and any introductions.

MR. LEWIS: Good morning, Your Honor. Sean Lewis appearing on behalf of the United States. I'm joined at

1 counsel table by Special Agent Rod Charles of the FBI, and
2 Special Agent Mike Hess also of the FBI.

3 THE COURT: Thank you, Mr. Lewis.

4 MR. NEWBURG: Good morning, Your Honor. Matt Newburg
5 on behalf of Mr. Nassar who is seated and to my left.

6 MS. SMITH: Good morning, Your Honor. I'm Shannon
7 Smith also on behalf of Mr. Nassar seated to my right.

8 MS. BLYTHE: Good morning, Your Honor. Molly Blythe
9 also on behalf of Mr. Nassar.

10 THE COURT: Thank you. On July 11, 2017, the
11 defendant appeared before Magistrate Judge Ray Kent and entered
12 a plea to Counts I, II and III of the superseding indictment.

13 Count I charges him with receipt and attempted receipt
14 of child pornography which is contrary to 18 U.S.C.
15 2252A(a)(2)(A), and 2252A(b)(1).

16 The potential penalties for that case range from a
17 five-year mandatory minimum to a 20-year maximum term of
18 imprisonment and a \$250,000 fine.

19 Count II charges him with possession of child
20 pornography which is again contrary to 18 U.S.C.
21 2252A(a)(5)(B), and 2252A(b)(2). Here the maximum potential
22 penalty is 20 years imprisonment and a \$250,000 fine.

23 Count III charges destruction and concealment of
24 records and tangible objects, and that offense is contrary to
25 18 U.S.C. 1519, and there the maximum potential penalty is

1 20 years imprisonment and a \$250,000 fine.

2 The offense behaviors can be fairly summarized as
3 follows: Counts I and II, over a long period of time the
4 defendant knowingly received voluminous amounts of child
5 pornography over the Internet. The images he received and
6 possessed included images of children under the age of 12.

7 Count III, the defendant knowingly deleted or altered
8 information on his computer; he paid to have his computer wiped
9 clean of all data, and he attempted to dispose of devices
10 containing child pornography knowing that he was under
11 investigation by the government, and with the intent to impede
12 or obstruct that investigation.

13 The magistrate judge's report and recommendation was
14 adopted by this Court on July 26, 2017. There is a written
15 plea agreement which I accept at this time and I specifically
16 find that the charges to which the defendant has entered guilty
17 pleas adequately reflect the seriousness of his actual offense
18 behavior.

19 There is also a, I'm sorry, a presentence report
20 prepared by United States Probation Officer Eric Hoffman who is
21 also in the courtroom this morning.

22 Mr. Lewis, does the government have any objections,
23 errors, omissions as to the facts as recited in the report
24 which is quite lengthy?

25 MR. LEWIS: No, Your Honor.

1 THE COURT: Thank you. Mr. Newburg, on behalf of the
2 defendant, any concerns about the factual recitation in the
3 report?

4 MR. NEWBURG: No, Your Honor.

5 THE COURT: Thank you. Mr. Nassar, a couple of
6 questions for you. You don't have to stand up. Please stay in
7 your seat.

8 Have you read the presentence report?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And have you discussed it carefully and
11 thoroughly with your attorneys?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And as you sit here in the courtroom this
14 morning, is there anything about the report that you either do
15 not understand or about which you have any question at all?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Okay. Now, your attorneys are, as --
18 yeah, they are retained. Have you been satisfied with the work
19 that they have done on your behalf during the course of this
20 case?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Okay. The presentence report includes a
23 calculation of the guidelines and the advisory guidelines
24 ranges as follows:

25 Counts I and II are grouped, and the calculations as

1 to them are singular, that is to say, the offense levels and so
2 forth apply to both. And there the offense level is 41, the
3 Criminal History Category is 2, and those two calculations
4 place this case in Zone D of the grid where the advisory range
5 is actually 360 months to life, but inasmuch as the maximum
6 statutory penalties for Counts I and II are 20 years, the
7 advisory range for incarceration becomes 240 months; the
8 supervised release range is five years to life, the fine range
9 is 50,000 to \$500,000, restitution has been calculated in this
10 case at \$57,488.52, in addition to which there is a special
11 assessment of \$5,000 on Count II pursuant to the Justice for
12 Victims of Trafficking Act of 2015.

13 There is also a special assessment of \$100 per count
14 for a total of \$200 on Counts I and II.

15 Count III, which is also grouped with Counts I and II,
16 also succeeds to an offense level of 41, and we retain the
17 Criminal History Category of 2, incarceration range there is
18 240 months also, supervised release range is three years, the
19 fine range remains 50,000 to \$500,000, restitution is the same,
20 and there's an additional special assessment of a hundred
21 dollars on Count III, and so we have a total special assessment
22 of \$300 plus the \$5,000 on Count II.

23 There are no objections to scoring. And I believe the
24 government has an agreement to move for the single offense
25 level reduction for timeliness of plea, correct, Mr. Lewis?

1 MR. LEWIS: Yes, the third point I do.

2 THE COURT: Thank you. My calculations of the
3 guidelines are the same as Mr. Hoffman's as to all three
4 offenses: Offense level 41, Criminal History Category 2, all
5 three carry an advisory guideline range of 240 months, as to
6 Counts I and II, supervised release range is five years to
7 life, as to Count III, it's three years, as to all three counts
8 the fine range is 50,000 to \$500,000, the restitution is as to
9 all three is \$57,488.52. There's a \$100 per count special
10 assessment, and the \$5,000 on Count II.

11 There are no motions for departure under the
12 guidelines. And I would ask counsel if you are in agreement as
13 to the accuracy of the advisory ranges of 240 months per count
14 incarceration, five years to life on Counts I and II supervised
15 release, three years on Count III for supervised release, and
16 the fine range of 50,000 to \$500,000.

17 Mr. Lewis, in agreement on the accuracy of those
18 calculations?

19 MR. LEWIS: I am, Your Honor. And the 240 per count
20 under the guidelines each would run consecutive to one another.

21 THE COURT: They can, yes. Thank you. Mr. Newburg.

22 MR. NEWBURG: We are in agreement, Your Honor.

23 THE COURT: Thank you. Mr. Newburg, are you going to
24 allocute on behalf of the defendant?

25 MR. NEWBURG: Yes, Your Honor.

1 THE COURT: Please come to the podium.

2 MR. NEWBURG: Thank you. Your Honor, as the Court is
3 aware based on the presentence memorandum that we submitted to
4 the Court, and as the Court has already articulated, this case
5 has garnered a lot of attention. And as the Court indicated in
6 its prior order, this case before Your Honor is about child
7 pornography, and I expect that Your Honor is going to hear from
8 my client. And I think I need to highlight some of the things
9 in the sentencing memorandum.

10 One thing is absolutely clear is that my client is a
11 family man. He helped his children; he provided help towards
12 an autistic foundation which directly benefited one of his
13 children; he's also a God fearing individual.

14 He has spent a significant period of time over the
15 last year, Your Honor, devoting himself back to the things that
16 he was grounded in which is his religion.

17 He's also deeply remorseful for the actions that
18 brought him before Your Honor. As we indicated in our
19 presentence memorandum, he wishes he could turn back the hands
20 of time, and I'm sure every defendant before Your Honor asks
21 that they could do the same.

22 THE COURT: It's a common theme, Mr. Newburg.

23 MR. NEWBURG: I understand. And he is obviously not
24 able to do that. And he is here before Your Honor to accept
25 the punishment that this Court is going to hand down for those

1 actions.

2 He's going to be missing a lot. And he understands
3 that what he's missing are based on his own actions. His
4 family is going to be, his children are going to be growing up
5 without him, but he's also lost the things that are closest to
6 him which are not just his family, but his job, the respect of
7 individuals, and the person that he was attempting to become.

8 I think the Court is going to hear from him that this
9 was a disease that he had been fighting with for a long period
10 of time. And now it has come to light.

11 I'm going to ask that the Court consider everything in
12 our presentence memorandum, all the letters of support that we
13 provided to this Court, and fashion a sentence that is adequate
14 based on the conduct in this case. Thank you.

15 THE COURT: Thank you. Mr. Nassar, at this point in
16 time you have the right to speak in your own behalf to tell me
17 anything that you think is important to me to know about you,
18 about the offenses you have committed, or anything else that
19 you think might be pertinent to my sentencing decision. If you
20 would like to speak, please come to the podium with Mr. Newburg
21 and I'll hear what you have to say.

22 THE DEFENDANT: Thank you, Your Honor. You know, this
23 is rather difficult, as you can imagine. You know, I stand
24 before the Court here, you know, for the sentencing of the
25 criminal counts.

1 And I have been, you know, battling with this
2 obviously for a considerable period of time. It was a
3 skeleton, you know, in my closet. It was something that, you
4 know, I'm very ashamed of. There is not a single person who
5 knew, you know, about this. And I never sought to try and get
6 help to try to manage it myself. My ego got in the way of
7 trying to take care of things. And over the years I did try to
8 manage it and consistently tried to improve myself, you know.

9 And, you know, I have lost everything because of this.
10 I mean it's horrific. You know, I think if you had a choice
11 between, I don't know, you know, if you think about, you know,
12 alcoholism and you think about, you know, drug doping and so
13 forth, and this, and they are very difficult. You know, if you
14 really look at it from that perspective. And the choices that
15 people make along the road, you know, you go back and you
16 wonder how I got down this path to begin with, you know. And I
17 have been able to avoid the drugs, been able to avoid the
18 alcohol, and the stress under situations that you can be placed
19 under, you know, and unfortunately, you know, I chose wrongly.

20 You know, and the loss of the love and respect of the
21 people that I once had is gone; that really hurts because I
22 really did try to be a good person; I really did try to help
23 people. You know, it's hard to sleep. I mean you think about
24 all the things that I'm going to miss, all the things that I
25 have done, all the things that I would have liked to have done.

1 It just, the thought of the pain that I have caused to
2 other people is far greater. It's one of the things that I've
3 asked my priest to pray for. I have never asked my priest to
4 pray for me. I always asked my priest actually to pray for
5 those people who have been offended, including those people in
6 the images. Because I understand that even though, you know,
7 on the sidelines you could say whenever you view those pictures
8 you are harming those people. And I don't think people fully
9 understand that. I think that's something that really needs to
10 be understood in this day and age with the digital media that
11 there's out there.

12 If anything, people -- I hope this, if there's any way
13 that this can be somehow or other turned into some type of good
14 is for people to use this media frenzy that's been around this
15 to try and get awareness to parents, to try and educate their
16 children a little bit more about it, awareness to peers because
17 a lot of time peer-to-peer pressure is even more significant
18 than parental pressure. Any which ways we need more education
19 about this. I really do feel that. To try and prevent others
20 from being caught in a similar trap. And I hope that that can
21 be accomplished.

22 I've always been a man of faith. And I've always
23 spent a lot of time over the last year, you know, asking for
24 forgiveness for myself, and I've asked that God, you know,
25 assist the victims in their healing process. That I do

1 morning, noon and night.

2 I hope one day that I can be forgiven for my wrongs.
3 And I'll take every day of your sentence to try and better
4 myself, and I will sincerely do that, Your Honor. Thank you
5 for your time.

6 THE COURT: Thank you. Mr. Lewis on behalf of the
7 government.

8 MR. LEWIS: Your Honor, this defendant's sexual
9 interest in children is what brings him before this Court
10 today. That sexual interest has manifested itself in two ways
11 in the defendant's life: Through amassing just an enormous
12 collection of child pornography, and sexually offending against
13 scores of children and young women.

14 These manifestations are in this case inextricably
15 intertwined, and we can not talk about the risk, the harm, or
16 the danger associated with one without talking about the other.

17 Indeed federal law directs us to look at the full
18 scope of the defendant's conduct when we talk about what type
19 of sentence will be appropriate, necessary to protect, deter,
20 and punish.

21 I want to talk about the first manifestation, the
22 child pornography conduct. The defendant here amassed a
23 collection that is just shockingly large. Investigators found
24 more than 37,000 images and videos of child pornography. Each
25 depicts an innocent child, a child who's been sexually abused,

1 exploited and degraded for somebody's sexual pleasure. The
2 defendant's collection ranged from the very young to teens.
3 Children being raped, sexually molested, digitally penetrated,
4 put on display for someone's depraved sexual gratification.

5 The Court has seen I know some of the exemplars from
6 his collection and can understand firsthand the depravity of
7 what we are talking about here today. Those images are
8 revolting. They are nauseating. And anyone who views them
9 should be feeling anger and pain and not sexual pleasure.

10 As one of the victims of those images has written in a
11 victim impact statement, "Don't you know no one should do that
12 to a little girl? Don't you know that is wrong?" And that
13 pain is not just momentary; it endures on and on into the
14 future. And that is one of the primary harms of this type of
15 offense. It perpetuates the harm to the children.

16 And the Court indicated earlier in this case we must
17 not lose sight of those victims. That those victims of child
18 pornography must have a voice, and I agree.

19 Six victims of the child pornography offense or
20 members of the family have submitted statements for the Court's
21 consideration. They stress this is not a victimless crime.
22 These are pictures of real children in real pain.

23 These children describe the horrible agony of knowing
24 their pictures are being circulated out there on the Internet.
25 They talk about how just that knowledge makes them feel like

1 they are being offended against, victimized all over again,
2 again and again.

3 They express to the Court their pain and sadness and
4 confusion, how anybody can take pleasure in their pain. And
5 they ask that someone like the defendant who took pleasure,
6 that he receive great punishment because his actions fueled the
7 demand for that type of product. And at the end of the day he
8 was a participant in their exploitation.

9 Child 8 who suffered personally at the defendant's
10 hand submitted a victim impact statement; she talked about the
11 way his conduct affected her, but she also tried to give a
12 voice to those child pornography victims. She asked on their
13 behalf if they were sitting here in this courtroom today what
14 would today's proceedings say. Would it convey the message
15 that when somebody looks at those images for their own deviant
16 pleasure that it is evil and wrong? Will the sentence today
17 say that that harm really matters? What will it say about what
18 each of those precious children is worth?

19 It's bad enough that child pornography perpetuates the
20 harm, but there is another layer of harm associated with it as
21 well. And that is it validates and normalizes the sexual abuse
22 and exploitation of children. Which puts other children at
23 harm. It fuels a market for the production of more child
24 pornography, and for some, it encourages them to act out
25 personally against children.

1 The victims of the child pornography appreciate this,
2 they understand it, and one has written, "Will some sick person
3 see my picture and then get the idea to do the same thing to
4 another little girl?"

5 And the Court can see in this case how the defendant
6 started down the road toward production himself with Child 1
7 and Child 2. And in addition to that, the Court has before it
8 overwhelming evidence about the scores and scores of children
9 the defendant personally sexually assaulted. And that brings
10 us to the second manifestation of his sexual interest in
11 children.

12 The numbers before the Court are simply staggering.
13 The duration of this conduct spanned two decades. Its scope
14 was nationwide. It wasn't just limited here in Michigan. In
15 fact, it wasn't even limited to the United States. The Court
16 knows from the presentence report that the defendant sexually
17 assaulted members of the U.S. Olympic team in countries across
18 the globe.

19 This type of hands-on conduct would be appropriate for
20 the Court to consider in any case. But in this case it is
21 particularly appropriate for the United States District Court
22 to consider it given the nationwide scope of his conduct.

23 And there is a link between the child pornography
24 conduct and the hands-on offense. As I briefed for the Court,
25 the consideration of hands-on conduct is within the heartland

1 of this type of case. The defendant's victims recognize this
2 too. One has written to the Court, "I became his real life
3 child pornography subject, his play thing, his experiment."

4 This hands-on conduct speaks loudly and clearly to the
5 defendant's true history and characteristics. The Court heard
6 his gloss on his history and his characteristics here today.
7 But actions speak louder than words. And it's those actions I
8 think that underscore the need to deter and to protect.

9 The defendant abused his position of trust and
10 authority. He was a doctor, somebody that we as a society
11 trust implicitly. But he was more than that. He was a doctor
12 to children, the people who parents hold most dear. They
13 trusted him with those children, and he violated that trust.
14 These victims were particularly vulnerable to his abuse. They
15 were young. The Court has read there's one as young as six.
16 Others nine, ten, 11. And scores or dozens in their teens.
17 They were hurting; they were in pain; and they were desperate
18 for relief; they were pursuing a dream.

19 And they trusted a man who to them seemed larger than
20 life. This man was the doctor for the U.S. Olympic team. The
21 defendant took advantage of that position to groom and
22 manipulate his victims. He made a point, the Court has read
23 about it, decorating his office with memorabilia to awe and wow
24 these little girls. He took advantage of an environment where
25 the girls were often alone, without a parent, without a

1 chaperone. He took advantage of a culture where only the
2 strong survive. Those who complain, those who are weak, don't
3 make it. He gained the trust of these little girls and
4 violated it.

5 And the Court has written submissions from two dozen
6 of those girls. They express in raw and powerful terms the
7 true devastation. I know the Court has them and has reviewed
8 them, and the Court has seen firsthand the victims's sense of
9 betrayal, shattered innocence, and trust, their pain and
10 confusion, their struggles with stress, anxiety, depression,
11 their resentment, their inability to trust, their completely
12 changed view of doctors. And at the end of the day, a deep
13 longing for accountability, for protection, and for justice.

14 On top of all this, the Court has before it the
15 defendant's actions of obstructing justice.

16 When the Court looks at the totality of the facts and
17 circumstances before it, these facts are undisputed. The harm
18 is profound, and the danger this man poses to the community is
19 real.

20 He has proven through his conduct over 20 years with
21 the child pornography, with the hands-on conduct, that he will
22 offend again.

23 And so that brings us here today. All eyes are
24 watching what happens here today. Those in positions of power
25 and influence who are thinking of offending as the defendant

1 has done are watching and asking, how seriously will this
2 conduct be taken? Will this sentence really deter? The
3 victims are watching and asking the same thing. Will others be
4 deterred? Will we and other children be protected?

5 We don't know what tomorrow may bring, Your Honor. We
6 don't know what some other Court may do or what the defendant
7 may do. He may try to withdraw his plea. We simply don't know
8 what will happen another day in another forum. But I know one
9 thing. Today the Court holds justice in its hands.

10 We ask the Court on behalf of the United States, the
11 victims here in this room, and the victims across this country
12 to hold the defendant accountable. When you fashion a sentence
13 look at the full scope, please, of his conduct; fashion a
14 sentence that will punish, that will deter, but that will, most
15 importantly, ensure that this man can never harm another child.
16 We ask for the maximum sentence. Thank you.

17 THE COURT: Thank you, Mr. Lewis. Well, the
18 guidelines as I think everybody is pretty much familiar with
19 are advisory but I do have to consult them and consider them
20 before reaching a sentencing decision reflective of my
21 underlying duty to impose a sentence which is sufficient but
22 not greater than necessary to comply with the purposes of
23 Section 3553(a).

24 And the statute really lays out a calculus for
25 evaluating how to reach that decision. And the first part of

1 that calculus has to do with balancing the offense, its
2 seriousness, and so forth against the offender.

3 And in terms of determining the seriousness of this,
4 these three offenses, it seems to me that there are a number of
5 levels that have to be considered:

6 In the first instance are the pornography, the child
7 pornography images themselves. The vast number of photographs
8 and videos, some of which I have in fact reviewed, is like
9 nothing, no other offense of this nature that I have reviewed.
10 And so that in and of itself makes this case somewhat unique.
11 The number of images, the number of videos, the fact that the
12 defendant made his own videos, at least one of which included
13 one of his own children, reflects the vastness of his offense
14 in the child pornography range where I don't know how many
15 children are reflected in those photos and images, those videos
16 that he accumulated over a period of two decades. There
17 probably were more on a computer whose data he successfully
18 arranged to be erased.

19 And then we have the destruction of evidence, the
20 third count here today, which clearly reflects the defendant's
21 understanding of his crimes and the danger that he faced having
22 committed them.

23 The second level of the seriousness of this crime
24 comes in what Mr. Lewis talked about so persuasively in terms
25 of the trust that has been destroyed; trust in authority

1 figures in general because the, in the related conduct aspect,
2 the young children and women not only were abused by a trusted
3 physician, but in many instances their concerns were dismissed
4 or overlooked. And so as Judge Aquilina in Ingham County noted
5 a couple of weeks ago, the defendant here violated the most
6 basic principle of medicine set down by the father of medicine,
7 Hippocrates, what, a couple of millennia ago, "First do no
8 harm." And in violating that basic tenet of medicine, that
9 Hippocratic oath, he harmed so many young people in terms of
10 their ability to trust. I cannot imagine what other physicians
11 might feel knowing that when they are alone with a young woman
12 in a treatment room what she might be thinking; whether she is
13 afraid that they will violate that trust as well.

14 Frankly, I have a hard time considering Mr. Nassar as
15 a physician because he has so thoroughly violated the very
16 concept of the physician as healer. I think Hippocrates also
17 is the one who said, "Physician heal thyself." And Mr. Nassar
18 never took the opportunity to do that over a period of
19 20 years.

20 The final level I think of this offense, of the
21 seriousness of it is the most personal one. And that is that,
22 and I did, I have reviewed all of the victim statements that
23 have been submitted, and what is perhaps most devastating is
24 the sense of self worth that these girls and young women have
25 had destroyed and who are trying so hard to restore.

1 Over and over again in these statements are the
2 comments that indicate they wondered, they questioned at every
3 turn, somebody told them they were wrong, they wanted to know
4 what's wrong with me? Why am I feeling this way? When he is
5 this renowned physician, and who am I, just a kid. And nobody
6 believes me. And maybe, maybe I am wrong, maybe I'm taking
7 this wrong. And so that kind of destruction of the sense of
8 self worth and belief in self has got to just be devastating to
9 any young woman. I think anybody whose had any contact with
10 adolescent children knows how vulnerable they are at that age
11 in their lives. How difficult they find trying to know how to
12 fit in, trying to know what's important, trying to learn their
13 values, and when somebody keeps telling them what they're
14 thinking is wrong, it's pretty difficult to overcome those
15 barriers.

16 We then, the statute then says, all right, you've
17 looked at the seriousness of the offense, how do you square
18 that up with the person who committed it?

19 Mr. Nassar is a 54-year-old now divorced man with
20 three children. He's well educated. He held positions of high
21 esteem and trust in the medical field, in the athletic field,
22 in his family, and in his community. But the dark side of his
23 nature played out away from all of that when he accessed
24 enormous amounts of child pornography and when he sexually
25 abused scores of children.

1 Often, amazingly enough, in highly risky situations
2 where parents were present. You have to wonder whether he felt
3 omnipotent, whether he felt he was getting away with something
4 so cleverly; a mother sitting in an examination room while he
5 was physically sexually abusing her daughter. I am a mom of
6 two daughters. I cannot imagine that kind of a situation.

7 As one of the victims said, "He seemingly had no
8 boundaries. He had no appreciation of the suffering he was
9 causing both in regard to his consumption of child pornography
10 and in his sexual abuse."

11 And this -- sometimes you can as a judge understand a
12 defendant's criminal offense by understanding a little bit
13 about their background. This is a man who self reports an
14 almost ideal childhood. This is a man who had the advantage of
15 excellent educational opportunity. He described his marriage
16 and his parenting in glowing terms.

17 So where did this come from? He inflicted deep wounds
18 on helpless children before he got the picture. He said, it's
19 interesting, he denied at one point that he did any of this for
20 self-gratification. What he said was when he was interviewed
21 by the probation officer that he accessed child pornography
22 expecting to get stress relief, but when the probation officer
23 asked him if he got any stress relief, he said, "none", yet he
24 continued to look at it, to access it, to accumulate it. I
25 wonder how long he expected to get anything from it. Why he

1 continued to access it when he wasn't getting any relief for
2 it. His rationalization wears thin. He was not seeking stress
3 relief. That is nothing more than rationalization. He was
4 satisfying the same sexual gratification he sought in abusing
5 his victims, his live victims.

6 So we then, the statute says, all right, what do we
7 hope to accomplish with sentencing. And Mr. Lewis pretty much
8 put his finger on it. There are three things in the goals of
9 sentencing that stand out in this case:

10 Punishment of course is one. But more important in my
11 view is deterrence and protection of the public. In the ten
12 plus years I've been sentencing consumers of child pornography,
13 those two latter statutory factors have taken on particular
14 significance. The defendants I have seen fall into roughly
15 three categories based on concerns about the dangers of acting
16 out against live victims after viewing the images they find,
17 trade, and sell online, and the corollary of protection of the
18 public from further acts of the defendant.

19 There are those who pose a low risk of acting out.
20 Now, we sometimes get evaluations from well-credentialed mental
21 health professionals based on testing, interviewing, and so
22 forth that are to some extent reassuring that a particular
23 defendant after confinement, treatment, and careful monitoring
24 will not likely pose a danger to child victims. And so the
25 deterrence and protection factors are a little bit of less

1 concern.

2 And I would note that this is a fairly small
3 percentage of the child pornography offenders that come before
4 this Court.

5 A larger number fall into a category where the danger
6 of acting out is not at all clear, and sometimes it's more
7 likely than not. And here the deterrence, protection factor
8 rises to a more significant level, and the balancing act to
9 determine a sentence that is sufficient but not greater than
10 necessary to achieve statutory goals is more difficult.

11 The third category of child pornography offenders is
12 those who remove all doubt about the dangers they pose for
13 acting out against children. And Mr. Nassar is the paradigm of
14 this group because he consumed enormous amounts of child
15 pornography and at the same time acted out on very real, very
16 vulnerable victims, hundreds if not thousands of times over a
17 long time span.

18 For these offenders, like Mr. Nassar, deterrence and
19 protection of the public are the principal concerns in
20 sentencings, and the ones I have focused on. It's imperative
21 that Mr. Nassar be deterred for as long as possible.

22 Mr. Nassar was, is, and in my view will continue to be
23 a real and present danger to children. And it is through
24 consecutive sentencing that I can take into account the need to
25 deter this man from harming innocent girls and young women for

1 the rest of his life.

2 Based on his behavior over a long period of time, he
3 has demonstrated that he should never again have access to
4 children.

5 The final concept or goal of sentencing is to avoid
6 unwarranted disparities. And I would say to you that there
7 really is no way to calculate that because Mr. Nassar is
8 unique, at least in terms of the experience of this judge.

9 So the question is whether the guidelines are
10 appropriate, whether the guidelines which suggest the statutory
11 maximum sentencings are properly reflective of the statutory
12 factors. And I think that they are. I think that balancing
13 those factors really leaves no question in my mind that the
14 maximum potential penalties are in order here.

15 The defense asks for a variance from the guidelines
16 essentially saying that Mr. Nassar is not all bad. And they
17 have submitted letters from family members and so forth. But I
18 really wonder whether on contemplation if those people who
19 wrote letters had been aware of Mr. Nassar's behavior would say
20 the same thing. Would say I would trust my children, my young
21 children, my young daughter in his presence alone. I wonder.

22 And so pursuant to the Sentencing Reform Act of 1984,
23 my sentence is as follows:

24 On Count I, 240 months incarceration; on Count II,
25 240 months incarceration consecutive to Count I; on Count III,

1 240 months incarceration consecutive to Counts I and II. And
2 the federal sentencings to be consecutive to the sentencings in
3 state court in case number 116 -- I'm sorry, that's the wrong
4 one. In Ingham County Circuit Court number 17-526-FC, and in
5 Eaton County Circuit Court number 17-20217-FC.

6 You know it's almost ironic that all three of the
7 sentencing judges in this case are women.

8 Supervised release to follow, if it gets to that, of
9 life on all three counts concurrent. There is a -- you're
10 right, Rick. Thank you. Life on Counts I and II, and on
11 Count III, three years.

12 Supervised release, as I said, to be subject to the
13 standard conditions of reporting and remaining law abiding. We
14 did provide counsel and the defendant with an order for
15 additional sentencing conditions before we came out. I believe
16 they have all signed it and I'm looking for it but I can't find
17 it right now. They have signed it, Mr. Nassar has signed it,
18 Ms. Smith, and Mr. Newburg, and I'm signing it for entry right
19 now.

20 The fine is waived in this case. The special
21 assessment and restitution are both included in the order
22 regarding additional sentencing conditions. Interest on those
23 two is waived.

24 I do also order the mandatory special assessment of
25 \$300.

1 Mr. Newburg, does the defendant have any requests for
2 recommendations to the Bureau of Prisons?

3 MR. NEWBURG: Not at this time, Your Honor.

4 THE COURT: Thank you. I don't recall, does the
5 government, Mr. Lewis, make a motion to dismiss the original
6 indictment?

7 MR. LEWIS: I do. It was subsumed within the
8 superseding so, yes, I do. Thank you.

9 THE COURT: Thank you. And there is no forfeiture
10 involved here, correct?

11 MR. LEWIS: Correct, Your Honor.

12 THE COURT: Thank you. All right. I would ask then
13 if there is any legal objection to the sentence which I have
14 just announced, whether there is anything that is not already
15 on the record why sentence should not be imposed as indicated.
16 Mr. Lewis?

17 MR. LEWIS: No, Your Honor. And I would note in
18 those, in the order regarding additional sentencing conditions
19 restitution is ordered, so thank you for that. And then the
20 other piece that I just wanted to make sure that the record is
21 clear on, in Murphy, the Sixth Circuit stated that the Court
22 must indicate on the record its rationale for imposing a
23 consecutive sentence to the state court sentence. I think it's
24 clear from the record that the Court is doing that because of
25 the nature and scope and totality of the defendant's conduct;

1 that it is not limited to Michigan and for all the other
2 factors the Court has already articulated.

3 THE COURT: Correct. Mr. Newburg, any reason why
4 sentence should not be imposed as I've indicated?

5 MR. NEWBURG: Your Honor, we would just object to the
6 consecutive sentencing to the state courts. But we will leave
7 that to Mr. Nassar to address at a later period. Thank you.

8 THE COURT: Thank you. Mr. Nassar, I need to talk to
9 you briefly about your appellate rights in this case, to the
10 extent you have them. I don't recall from the plea agreement
11 whether appellate rights have been waived. Probably a lot of
12 them have. But in any event, when the judgment is entered in
13 this case, which will probably be yet today, that will start a
14 period of 14 days running, and in those 14 days you have to
15 decide if you wish to appeal my sentence. Now, you obviously
16 need to talk to counsel about that, ask them any questions you
17 might have, seek their advice and so forth. But it's your
18 responsibility to let them know within 14 days whether you wish
19 to appeal my sentence. If you do, they will be under a
20 continuing obligation to represent you in that proceeding.

21 Do you understand those two things?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Okay. If there is nothing further,
24 Mr. Lewis.

25 MR. LEWIS: No, thank you.

1 THE COURT: Mr. Newburg.

2 MR. NEWBURG: No, Your Honor, thank you.

3 THE COURT: We are adjourned.

4 THE CLERK: All rise, please. This court is now
5 adjourned.

6 (Proceedings concluded, 11:49 a.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

REPORTER'S CERTIFICATE

I, Kathy J. Anderson, Official Court Reporter for the United States District Court for the Western District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true and correct transcript of the proceedings had in the within entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

/s/ Kathy J. Anderson

Kathy J. Anderson, RPR, FCRR

U.S. District Court Reporter

412 Federal Building

Grand Rapids, Michigan 49503